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Board of Supervisors

Patrick G. Call
Chairman
District 1

Paul Newman
Vice-Chairman
District 2

Richard R. Searle
District 3



Jody N. Klein
County Administrator

Katie A. Howard
Clerk

ORDINANCE # 035-06

REGULATING OBSTRUCTIONS, EXCAVATION, AND USE OF PUBLICLY MAINTAINED RIGHTS-OF-WAY

WHEREAS, publicly maintained rights-of-way within the unincorporated limits of Cochise County are used for purposes other than public ingress and egress; and

WHEREAS, Cochise County can impose restrictions and limitations on the use of publicly maintained rights-of-way pursuant to A.R.S. §11-251(4) and A.R.S. § 40-283(B) to protect the public safety and welfare;

WHEREAS, this Ordinance repeals Ordinance #34-04 and any portion of any resolution, rule or regulation conflicting with this Ordinance; and

WHEREAS, proper notice has been given.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Supervisors hereby rescinds Ordinance 34-04 and adopts Ordinance # 035-06 as follows:

A. DEFINITIONS

1. "Publicly maintained rights-of-way" means the entire width of the right-of-way for any road under the exclusive control of the Cochise County Board of Supervisors, whether held by deed, easement, dedication, or other claim of right, including bridges, and which have been included in the County Road Maintenance System.
2. "Encroachment" shall include any obstruction whether temporary or permanent unless expressly authorized by law, any sign, any landscaping, any new driveway or other road that connects to a road included in the County Road Maintenance System, the diversion of waters, any excavation whether or not conducted under a valid franchise, culvert installations whether new or replacement, and any other construction.
3. "Roadway prism" shall include the traveled road surface, shoulders, and ditches.

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4. "Permittee" shall include the person, partnership, company or political subdivision that signs the permit form and the person, partnership, company or political subdivision on whose behalf the work is intended to be performed. All such persons, partnerships, companies or political subdivisions shall be responsible for complying with the requirements of this Ordinance and permit conditions.
5. "Private Road" shall include any access serving more than one lot.

B. GENERAL PROVISIONS

1. No encroachment in, on or within a publicly maintained right-of-way shall be allowed without a written permit from the County Engineer, except an encroachment by authorized County Highway employees and contractors acting under a County contract. No permittee shall violate the terms and conditions of a permit unless a written variance is obtained from the County Engineer.
2. No excavation, fill or grading that requires a permit pursuant to the County Land Clearing Ordinance, which relates to a driveway or road that connects to a road within the County Maintained Road System, or which appears to be intended to eventually be connected to such a road, shall be allowed without a written permit from the County Engineer.
3. No vehicle shall be operated or any other activity conducted on any chip-seal, concrete or asphaltic concrete surface of a road included in the County Maintained Road System in a fashion which damages the road surface or base without a permit from the County Engineer unless the use is specifically authorized by law.
4. The County Engineer is authorized and instructed to prepare specifications and application and permit forms detailing the conditions and restrictions under which the encroachment is allowed.
5. All encroachments shall meet the standards noted in the *Cochise County County Road Design and Construction Specifications for Public Improvements*.
6. Any permit issued is revocable at will should it be necessary to protect the public safety, to protect the condition of a publicly maintained right-of-way or to allow for road expansion.
7. The County Engineer is authorized and directed to charge a permit fee in an amount authorized by the Board of Supervisors.
8. Emergency encroachments, including excavation for public utility repairs necessary to protect the public safety, are allowed without a permit provided a

permit is applied for within two working days, all traffic control and safety devices necessary are used, and final repairs are not performed until authorized by the County Engineer.

9. In the event an encroachment of a publicly maintained road occurs within the road prism without a permit so as to cause an immediate public hazard, the County may remove the obstruction and seek reimbursements of the costs involved from the responsible person. In all other cases, the provisions of A.R.S. §28-7053 and §28-7054 shall apply.
10. In the event a permittee has previously failed to comply with the conditions of a prior permit issued pursuant to this or previous Ordinance, then the permittee shall be required to submit a satisfactory security of performance in connection with any new permit application. This security shall be available to the County to correct any deficiencies not promptly remedied by the permittee. Satisfactory security shall consist of a performance bond or cash in the amount equal to 100% of the estimated cost of the repair. This security shall be refunded within 45 days after the date of the final inspection, if the permittee has satisfactorily complied with all permit requirements.
11. The permittee may be required to submit a certificate of insurance from an insurance company authorized to transact business in Arizona, as co-insured and shall provide not less than \$1,000,000 coverage for Public Liability and Property Damage.
12. The permittee assumes the responsibility for all liability for any injury or damage to any person or property, or to the County maintained right-of-way, caused by or arising out of the work performed pursuant to the Permit. The permittee shall indemnify, defend and hold harmless Cochise County, its officers, departments, employees and agents from and against any and all suits, actions, proceedings, claims, demands or damages of any kind, including all costs of legal defense arising out of the exercise of its permit which are attributed to any act or omission of the permittee, its agents, employees or anyone acting under its direction, control or on its behalf.
13. The County shall conduct inspections to verify that the encroachment has been constructed or installed per the approved permit prior to the commencement of the use and/or permit closure.

C. SPECIAL PROVISIONS RELATING TO EXCAVATION AND CONSTRUCTION

1. The County Engineer shall prepare written specifications to be included as conditions of publicly maintained right-of-way excavation and construction permits. The specifications shall include, but not be limited to the following:

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- a. Traffic control including signs specified in the *Manual on Uniform Traffic Control Devices*.
- b. Procedures for repairing road cuts.
- c. A requirement for 100% backfill compaction within the traveled road surface and 95% within the remaining roadway prism.
- d. A provision prohibiting pavement cuts except when approved by the county engineer per current county standards.
- e. A requirement that any repair shall restore the road to the same or better condition.
- f. A requirement that drainage shall not be altered so as to have an adverse impact on surrounding property.
- g. A notification that the permittee shall be responsible for verifying the location of utilities through Blue Stake.

2. A permit to excavate or construct shall be valid for the time period specified in the permit, which shall not exceed one year from the date it is issued. Permittees shall notify the County 48 hours prior to commencing work and no later than the next business day after completion. A copy of the permit shall be available at the location of the work, and shall be made available to the Engineering inspector upon request.

D. SPECIAL PROVISIONS RELATING TO UTILITIES

1. All utilities must be installed a minimum of 36 inches below the finished surface. Cable television cables shall be installed as specified by County franchise. In the event there are special public safety concerns in the opinion of the County Engineer, three-dimensional, as-built drawings may be required upon completion of construction. Cochise County shall not be liable for damages caused to utilities installed at a depth of less than 36 inches.

2. In the event a public utility line within the roadway prism becomes exposed or prevents roadway maintenance, the County Engineer may require that the line be lowered or moved without expense to the County.

3. Pursuant to A.R.S. §40-283(B) the requirements in this Ordinance supersede the provisions of any utility franchise.

E. VARIANCES

The County Engineer is authorized to grant variances from the restrictions and conditions specified herein where imposition of such restrictions and conditions would impose undue hardship, and where the purposes of this Ordinance will otherwise be served by such a variance, and provided the public safety and welfare will be protected.

F. REMEDIES

1. In the event the conditions of a permit are violated or a permit is not obtained, the County Engineer may suspend the permit, if any, and order that all work cease until the violation is corrected or a permit obtained. If the work is abandoned and not repaired to County specifications, the County may repair the work and recover the costs of repair from the person responsible. Where necessary to protect the public safety and welfare, the County Engineer may place a physical barrier to prevent access to a publicly maintained right-of-way until the permit violation is abated or a permit is obtained.

2. The County Attorney is authorized to initiate such other enforcement action as may be deemed necessary including, but not limited to, an action to enjoin the party from violating this Ordinance, and to impose fines or other sanctions allowed by Arizona law as may be necessary or desirable in order to compel the party violating this Ordinance to cease such violation and to comply with any permit that has been issued.

3. Any person commencing work without a permit shall be required to obtain a permit and shall pay the fee for starting work without a permit as specified by the Board of Supervisors.

G. PENALTIES

Any person who violates this Ordinance shall be guilty of a class 1 misdemeanor. Where Arizona law authorizes civil penalties or other sanctions, any party who violates this Ordinance shall be subject to such civil penalties or sanctions.

H. FEE SCHEDULE (See Attached)

I. EFFECTIVE DATE

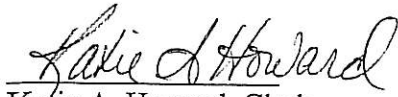
This Ordinance shall be effective 30 days after its approval by the Cochise County Board of Supervisors.

PASSED AND ADOPTED BY THE COCHISE COUNTY BOARD OF SUPERVISORS this 11th day of April, 2006.



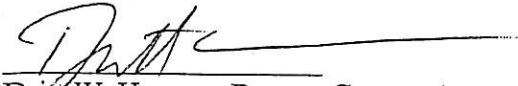
Pat Call, Chairman
Board of Supervisors
Cochise County, Arizona

ATTEST:



Katie A. Howard, Clerk
Board of Supervisors
Cochise County, Arizona

APPROVED AS TO FORM:



Britt W. Hanson, Deputy County Attorney

ATTACHMENT A
USE OF PUBLIC RIGHTS-OF-WAY FEE SCHEDULE

FILING FEE*	ITEM DESCRIPTION	ADDITIONAL FEE*	PER UNIT
\$25.00	Utility trenching: Less than 200 Feet 200 – 400 Feet 401 – 600 Feet 601 – 1000 Feet 1001 and above	\$25.00 \$40.00 \$50.00 \$75.00 \$75.00 + \$.10 Per Foot Over 1001	
\$25.00	Power poles or other utility structures	\$10.00	Each
\$0	Special Inspection Fee	\$50.00	Hour
	Work Begun Without a Permit	Regular permit fee plus \$50.00/hour surcharge for additional work associated with processing the permit (research, inspections, etc.)	Each
\$0	Informational Permit	\$0	Each
\$35.00	Non-Construction in Right-of-Way	\$0	Each
\$0	Engineer Review of Improvement Plans for Public and/or Private Improvements	\$125.00	Sheet
\$0	Subdivision Phase Inspection Fee	\$50.00/Inspection with a Maximum of \$750.00 for Subdivisions with 25 or Fewer Lots	Each Phase
\$0	Inspection Fee for Non-Subdivision Improvements Intended to be Public	\$50.00/Inspection	
\$25.00	Driveways	\$75.00	Each
\$25.00	Private Road Access	\$100.00	Each

* When the applicant is another Cochise County Department, a permit is required, but no fees shall be charged.



FEE # 060414611
OFFICIAL RECORDS
COCHISE COUNTY
DATE 04/18/06 HOUR 4
REQUEST OF
COCHISE COUNTY BOARD OF SUPV
CHRISTINE RHODES-RECORDER
FEE : PAGES : 7

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